

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PATRICK EUGENE JAMAR SPAIN,

Plaintiff,

Case No. 1:15-CV-205

v.

Hon. Gordon J. Quist

ST. JOSEPH COUNTY JAIL and
COREY SMITH,

Defendants.

**ORDER ADOPTING IN PART AND REJECTING IN PART
REPORT AND RECOMMENDATION**

On February 11, 2016, Magistrate Judge Ray Kent issued a Report and Recommendation in which he concluded that Plaintiff had failed to state a claim against Defendant St. Joseph County Jail. Magistrate Judge Kent further concluded that there was a dispute of fact regarding whether Defendant Smith had arrested Plaintiff. The magistrate judge noted that, although Smith had provided an affidavit stating that he did not arrest Plaintiff, Plaintiff had submitted a verified complaint stating that Smith had arrested Plaintiff. Smith objected to the Report and Recommendation and provided additional evidence that was not before the magistrate judge—a police report stating that Sgt. Andrew Howes (rather than Smith) was the arresting officer. The Court has discretion to consider such additional evidence. *See* 28 U.S.C. § 636(b)(1); *Muhammad v. Close*, No. 08-1944, 2009 WL 8755520, at *2 (6th Cir. Apr. 20, 2009).

Plaintiff did not respond to Defendants' motions and, in fact, has taken no action in this case since filing his complaint. Noting that Smith had provided multiple pieces of evidence demonstrating that he did arrest not Plaintiff, and Plaintiff had provided nothing to refute such

evidence except a statement in his verified complaint, the Court ordered Plaintiff to show cause why the Court should not grant Smith's motion for summary judgment. The deadline for Plaintiff to show cause has passed, with no response from Plaintiff.

Therefore,

IT IS HEREBY ORDERED the Report and Recommendation filed on February 11, 2016 (dkt. #25) is **ADOPTED in part and REJECTED in part**.

IT IS FURTHER ORDERED that Defendant Smith's Motion for Summary Judgment (dkt. #22) is **GRANTED**.

IT IS FURTHER ORDERED that Defendant St. Joseph County Jail's Motion to Dismiss (dkt. #18) is **GRANTED**.

This case is concluded.

Dated: March 31, 2016

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE